

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	No. CV-F-05-285 REC
)	
)	ORDER GRANTING PETITIONER'S
Petitioner,)	MOTION TO COMPEL PAYMENT OF
)	TRANSCRIPTS (Doc. 38)
vs.)	
)	
LORNE McCAN,)	
)	
)	
Respondent.)	
_____)	

On August 22, 2005, the court heard petitioner's Motion to Compel Payment of Transcripts. No opposition was filed by respondent and respondent did not appear at oral argument.

Upon due consideration of the record and the arguments of petitioner, the court grants this motion for the reasons set forth herein.

Respondent appealed the Summons Enforcement Order to the Ninth Circuit on June 13, 2005.

Rule 10, Federal Rules of Appellate Procedure, and Rule 10.1, Ninth Circuit Rules, pertain to the record on appeal. Rule

1 10(a) and Rule 10-3.1(a) require that an appellant must order
2 from the reporter all portions of the transcript not already on
3 filed that the appellant believes necessary for the appeal or
4 file a certificate that no transcript will be ordered within ten
5 days after filing the notice of appeal. According to the United
6 States, respondent has not complied with these requirements. On
7 July 1, 2005, the United States designated the transcript of
8 proceedings held before Magistrate Judge Beck on May 6, 2005 as
9 necessary for the defense of the appeals pursuant to Rule 10-
10 3.1(d). Rule 10-3.1(d) provides that, within 30 days of the
11 filing of the notice of appeal, the appellant shall file a
12 transcript order in the district court, providing a copy to the
13 court reporter and the Court of Appeals and that

14 In order the transcripts, appellant shall
15 either order all portions of the transcript
16 listed by both appellant and appellee or
17 certify to the district court pursuant to
subsection (f) of this rule that the portions
listed by appellee in the response to
appellant's initial notice are unnecessary.

18 According to the United States, respondent failed to comply with
19 Rule 10-3.1(d), even after the United States served respondent
20 with a notice describing these rules and setting forth the dates
21 of compliance.

22 The United States moves the court to order respondent to pay
23 for the May 6, 2005 transcript designated by the United States as
24 necessary to defend these appeals. Rule 10-3.1(f) provides in
25 pertinent part:

26 If appellee notifies appellant that

1 additional portions of the transcript are
2 required ..., appellant shall make
3 arrangements with the court reporter to pay
4 for these additional portions unless
5 appellant certifies that they are unnecessary
6 to the appeal and explains why not.

7
8 If such a certificate is filed in the
9 district court, with copies to the court
10 reporter and this court, the district court
11 shall determine which party shall pay for
12 which portions of the transcript

13 In moving for an order that respondent pay for the May 6, 2005
14 transcript, the United States notes that respondent did not
15 comply with Rule 10-3.1(f) by filing the certification that the
16 transcript ordered by the appellee was unnecessary. As the
17 United States argues:

18 The present appeal notices were mere pretexts
19 for delay. They were a transparent attempt
20 to frustrate the Orders instructing the
21 respondents-appellants to appear in Judge
22 Beck's courtroom on June 17, 2005 and comply
23 with the IRS summonses. In that courtroom,
24 respondents-appellants could have asserted
25 their self-incrimination claims in response
26 to specific questions, and could have had
those claims tested before Judge Beck. But
respondents-appellants filed their appeal
notices June 13, 2005, just four days before
they were to appear, and on June 17 they
refused to appear, delaying their compliance
with the Orders. Their appeal notice on its
face belies any seriousness in the appeal,
for respondents-appellants, who are
individuals, there make the incredible
contention that this Court cannot force them
to testify 'since the respondent is an
artificial entity.' ... That the respondents-
appellants refuse to perfect their appeals as
required by FRAP 10 and 9th Cir.R. 10-3.1,
only confirms their appeals' lack of
seriousness. Should respondents-appellants
refuse to comply with the compulsive order
sought here, their cavalier behavior toward
the requirements for perfecting an appeal may

1 help convince the Ninth Circuit to dismiss
2 their appeal.

3 Because respondent has not complied with the above-quoted
4 rules and has made no showing to this court that this motion
5 should not be granted, the court rules that this motion be
6 granted.

7 ACCORDINGLY:

8 1. Petitioner's Motion to Compel Payment of Transcripts is
9 granted.

10 2. Within ten (10) court days of the filing date of this
11 Order, respondent shall order and pay for the transcript of the
12 hearing held before Magistrate Judge Beck on May 6, 2005.

13 IT IS SO ORDERED.

14 **Dated: September 7, 2005**
668554

/s/ Robert E. Coyle
UNITED STATES DISTRICT JUDGE